

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Unbundled Access to Network Elements)	WC Docket No. 04-313
)	
Review of Section 251 Unbundling Obligations)	CC Docket No. 01-338
of Incumbent Local Exchange Carriers)	

**OPPOSITION TO PETITION FOR RECONSIDERATION OF IOWA
TELECOMMUNICATIONS SERVICES, INC. (D/B/A IOWA TELECOM)**

Birch Telecom, Inc., BridgeCom International, Inc., Broadview Networks, NuVox Communications, Inc., SNiP LiNK LLC, XO Communications, Inc., and Xspedius Communications, LLC (collectively, "Joint Commenters"), pursuant to 47 C.F.R. §1.429(f), by their attorneys, bring this Opposition to Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom's ("Iowa Telecom") Petition for Reconsideration ("Petition") of certain portions of the Federal Communications Commission ("FCC" or "Commission") *Order on Remand* ("TRRO"),¹ in which it asks the Commission to adopt a third disjunctive factor for determining non-impairment for dedicated interoffice transport in Tier 1 and Tier 2 wire centers. Specifically, Iowa Telecom asks that the Commission modify its dedicated transport impairment triggers to de-list UNE transport when four (Tier 1) or three (Tier 2) competitive dedicated interoffice transport providers have a point of presence ("POP") anywhere within an incumbent local exchange carrier's ("ILEC") serving wire center area.

Iowa Telecom's Petition should be rejected because: (1) it erroneously proposes a disjunctive test, rather than a conjunctive test, for determining non-impairment; and (2) it

¹ *In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, WC Docket No. 04-313, CC Docket No. 01-338 (rel. Feb. 4, 2005) ("*Triennial Review Remand Order*") ("*TRRO*").

proposes a non-route-specific test that does not meet the Commission's market definition for interoffice dedicated transport and therefore does not accurately indicate the existence of non-impairment. Iowa Telecom's proposal would only exacerbate an already flawed series of tests for unbundled transport that, as adopted by the Commission, grossly overstate the number of routes on which carriers are not impaired. The Commission should revise its transport tests consistent with Joint Commenters' own petition for reconsideration and petition for forbearance, on file with the Commission.² In support of this Opposition, Joint Commenters show as follows:

I. A DISJUNCTIVE TEST AS SUPPORTED BY IOWA TELECOM DOES NOT ACCURATELY INDICATE NON-IMPAIRMENT

Iowa Telecom supports the Commission's use of a disjunctive test to determine whether competitors are impaired without unbundled access to interoffice dedicated transport, but seeks to add a third disjunctive factor for determining non-impairment in Tier 1 and Tier 2 wire centers. Specifically, Iowa Telecom asks the Commission to modify its impairment test to find non-impairment when at least four (in the case of Tier 1 wire centers) or three (in the case of Tier 2 wire centers) competitive dedicated interoffice transport providers each with a POP are present anywhere in the ILEC's wire center area.³ If the Commission were to adopt Iowa Telecom's proposed third factor, the test for dedicated transport impairment would be based on the number of fiber-based collocators, or the number of business lines served by a wire center, or the number of dedicated interoffice transport providers with a POP in the wire center.

² In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand, WC Docket No. 04-313, CC Docket No. 01-338, Petition for Reconsideration of Birch Telecom, Inc., BridgeCom International, Inc., Broadview Networks, Eschelon Telecom, Inc., NuVox Communications, Inc., SNiP LiNK LLC, XO Communications, Inc. and Xspedius Communications, LLC, filed March 28, 2005 at 17-21 ("Joint Commenters' Reconsideration Petition") (filed March 28, 2005); XO Communications, et al., Petition for Forbearance, WC Docket 05-170 (filed March 28, 2005).

³ Iowa Telecom Petition at 4.

As Joint Commenters noted in their own Petition for Reconsideration, the Commission's transport impairment tests suffer from a series of fundamental flaws that substantially overstate the number of routes for which carriers do not face impairment. Rather than making the Commission's tests more lenient – and therefore, more likely to eliminate UNEs even when carriers are impaired – the Commission should be strengthening its impairment criteria to require more evidence of non-impairment. At its most fundamental level, the fatal error in Iowa Telecom's Petition is its support of the Commission's disjunctive test for dedicated transport impairment. As explained in Joint Commenters' Reconsideration Petition, a transport test that looks at either fiber-based collocators or business lines, but not both in tandem, cannot adequately predict where requesting carriers are not impaired.⁴ A high number of fiber collocators may only indicate that the wire center is close to rights of way or close to other wire centers. It does not say anything about the level of demand for transport to or from that office. A high number of business lines may indicate potential revenue or a potential need for transport, but it does not address whether other factors such as access to rights of way or the cost of deploying fiber impair a CLEC's ability to deploy the needed facilities.

In the *Triennial Review* proceeding, the Commission found that among the substantial fixed and sunk costs associated with deploying transport were collocation costs, the cost of fiber, the cost of burying fiber or attaching the fiber to poles, the cost of optronics and the cost of obtaining rights of way.⁵ As the Commission explained, each of these factors can vary based on the individual situation.⁶ Therefore, the presence of fiber based collocators or the existence of a

⁴ *Joint Commenters' Reconsideration Petition* at 17-21.

⁵ *In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, 98-147 (rel. Aug. 21, 2003) at ¶ 371 ("*Triennial Review Order*") ("*TRO*").

⁶ *Id.*

specified number of business lines in a wire center, independent of each other, simply do not capture those instances where requesting carriers are unimpaired.

Further, as discussed in Joint Commenters' Reconsideration Petition, it is not true that a conjunctive test ignores potential deployment. In the context of transport, the Commission seems to believe that business lines alone represent the potential for deployment of transport. But this is not the case. For one thing, the RBOC data submitted to the Commission showed that at levels approximating the FCC's 38,000 line and 24,000 line thresholds, a significant number of wire centers still did not have multiple fiber based collocators.⁷ Yet, as the Commission recognized with respect to loops, the potential for deployment depends upon a combination of both revenue opportunities and the scope of other facilities already deployed in the area.⁸ A test that examines both factors in tandem is the only test that can assess whether it is both desirable and possible to deploy facilities to the wire center.⁹ Thus, at a minimum, the Commission must establish transport impairment tests that analyze both fiber based collocators and business access lines in conjunction to assess whether requesting carriers are impaired without access to UNE transport.

⁷ *TRRO*, ¶ 114. This estimate itself proved to overstate the presence of facilities based collocators. As the RBOC filings after the *TRRO* demonstrated, most of the RBOCs counted fiber-based collocations in their December submissions, not fiber-based collocators. See, e.g., Letter from Susanne A. Guyer, Verizon, to Jeffrey J. Carlisle, Chief, Wireline Competition Bureau, WC Docket 04-313, February 18, 2005 at 1 ("Verizon has amended its count ... to reflect the number of providers rather than the number of collocation arrangements"). Multiple collocations by the same or affiliated carriers thus inflated the data on which the Commission relied.

⁸ *TRRO* at n. 266.

⁹ Moreover, the Commission erred by ignoring evidence that impairment exists at a nationwide level for all DS1 transport and DS1 EELs and by adopting a loop test that bears no relationship to the factors which create impairment. On reconsideration or via forbearance, the Commission should correct these flaws in its impairment analysis.

Indeed, as a result of the Commission's "line drawing,"¹⁰ as many as 40 percent of the Tier 1 transport wire centers are found erroneously to be non-impaired. This estimate is based on a review of the evidence submitted on a confidential basis by SBC. Upon review of the backup data, 76 of the 207 wire centers (36.7 percent) alleged by SBC to meet the Tier 1 transport thresholds qualify solely based on a number of facilities-based collocators; these 76 each have fewer than the threshold number of business access lines. If other RBOC data are consistent with the SBC data, as many as 40 percent of the transport wire centers may qualify solely because the FCC erroneously required satisfaction of only one of its two criteria for determining non-impairment.

Iowa Telecom's additional disjunctive test would magnify the error already present in the Commission's rules. By adding a third alternative, Iowa Telecom's Petition would lead to findings of non-impairment when neither the requisite number of collocated carriers nor the required number of business lines are present. This would further attenuate an already tenuous relationship between the Commission's tests and the availability of actual competitive alternatives on a route. Yet there is no evidence that Iowa Telecom's test identifies locations where requesting carriers are not impaired without the ILECs' UNE transport. Indeed, it is telling that Iowa Telecom does not identify any specific wire centers where its test would find non-impairment. By definition, these wire centers will be extremely small, and will have little or no competitive deployment to them. Requesting carriers obtaining local loops in those wire centers will not have alternatives other than the ILEC's interoffice transport.

¹⁰ *Id* at ¶169 ("...the Commission may exercise line-drawing discretion when rendering determinations based on agency expertise, our reading of the record before us, and a desire to provide an easily implemented and reasonable bright-line rule to guide the industry.").

Accordingly, the Commission should reject the Iowa Telecom's Petition due to its reliance on the Commission's erroneous finding that a disjunctive test accurately indicates non-impairment for dedicated interoffice transport. Instead, for the reasons explained in Joint Commenters' Reconsideration Petition, the Commission should revise its transport impairment tests to find non-impairment based on the presence of an appropriate number of collocated carriers and an appropriate number of business lines in the wire center.

II. IOWA TELECOM'S PROPOSED TEST IS INCONSISTENT WITH THE COMMISSION'S ROUTE-SPECIFIC APPROACH

In the *TRRO*, the Commission adopted a route-specific market definition for interoffice dedicated transport after considering and rejecting various industry proposals.¹¹ The Commission found that dedicated transport impairment can only be determined by examining a connection between ILEC wire center A or switch A and ILEC wire center B or switch B.¹² Thus, both end-points of the route define the market for the analysis of dedicated transport impairment, according to the Commission. The Commission expressly rejected proposals by Verizon and BellSouth to define the relevant market for dedicated transport as an entire metropolitan statistical area ("MSA") or to focus on only one end of a route to determine impairment. The Commission rejected the MSA-based approach after finding that impairment may vary in different parts of the MSA,¹³ and held that the single end-point test fails to establish whether a carrier can connect the end-point to another end-point.¹⁴ Specifically, the Commission found that "BellSouth's [single end-point] proposal is designed to ignore significant and relevant

¹¹ *TRRO* at ¶¶ 78-85.

¹² *Id.* at ¶ 80.

¹³ *Id.* at ¶ 82.

¹⁴ *Id.* at ¶ 84.

economic factors that are fundamental to a competing carrier's ability to deploy transport."¹⁵ It explained that an analysis of only one end of the route failed to adequately demonstrate that a requesting carrier could self-provide or use other transport to reach the end of another route.¹⁶

Iowa Telecom states that it supports the Commission's route-specific market definition, finding the Commission's route-by-route approach to be "logically sound and administratively simple."¹⁷ However, Iowa Telecom's proposal to adopt a third disjunctive factor based on the presence of competitive dedicated interoffice transport providers anywhere in the wire center falls outside of the Commission's market definition for interoffice dedicated transport, as it fails to consider the "economics of deployment on both ends of [the] transport route" as required by the *TRRO*.¹⁸

Iowa Telecom asserts that some transport providers "pass through" LEC territories or "traverse the state" without necessarily collocating in a wire center.¹⁹ Though Iowa Telecom claims these networks provide dedicated transport, they do not do not provide "transport" as defined by the Commission. In the *TRO*, the Commission limited the transport UNE to dedicated facilities between two ILEC wire centers.²⁰ Transport must connect two wire centers in order to be a UNE. This is appropriate, for transport is used most often by requesting carriers purchasing unbundled loops that terminate in a wire center. Thus, a requesting carrier must be able to access the transport at the wire center in order to connect it to unbundled loops that it obtains in that wire center. In determining whether a requesting carrier is impaired without UNE

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Iowa Telecom Petition at 2.

¹⁸ *TRRO* at ¶ 84.

¹⁹ Iowa Telecom Petition at 5-6.

²⁰ *TRO* at ¶365.

transport, the Commission must look to alternatives that are accessible at the wire center. An alternative that “passes through” the serving area of the wire center, but does not provide a connection in the wire center, is not a meaningful alternative and does not provide evidence of non-impairment in that wire center.

Though it claims its test is route-specific, Iowa Telecom’s proposed factor would create findings of non-impairment based solely upon the presence of competitive transport providers without regard to where those competitive transport providers’ networks are located or to what other carriers they are interconnected. In essence, Iowa Telecom resurrects the RBOCs’ proposed “presence of CLEC networks” test, which the Commission correctly rejected.²¹ Assuming *arguendo* that there are several competitive transport providers in a wire center area, impairment on a transport route cannot accurately be determined without an analysis of where a requesting carrier can transport traffic via those networks. Iowa Telecom’s test does not answer this critical question.

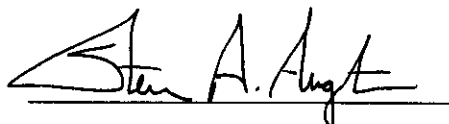
Accordingly, the Commission should reject Iowa Telecom’s proposed impairment trigger because it fails to analyze impairment on any particular route and therefore does not accurately determine where requesting carriers are unimpaired without access to interoffice dedicated transport.

CONCLUSION

In light of the foregoing, Joint Commenters request that the Commission reject Iowa Telecom’s Petition for Reconsideration. Instead, the Commission should revise its impairment analysis consistent with Joint Commenters’ Reconsideration Petition in this docket and their Petition for Forbearance filed in Docket 05-170.

²¹ *TRRO* at ¶84.

Respectfully submitted,

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